

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Charlie McCants, Jr.,)
Petitioner,) C/A No. 1:12-2721-RMG
vs.) ORDER
Simon Major, Director, Sumter-Lee Detention Center,)
Respondent.)

On September 21, 2012, two self-described “next best friends” of prisoner Charlie McCants, Jr. (“Petitioner”), filed an action seeking habeas corpus relief for him under 28 U.S.C. § 2241. (Dkt. No. 1). Pursuant to Local Rule 73.02(B)(2), the case was assigned to a Magistrate Judge. (Dkt. No. 2). On October 28, 2012, the Magistrate Judge ordered Petitioner to, within twenty-one (21) days of the issuance of its order, submit items needed to render this case into proper form. (Dkt. No. 6 at 2). The Magistrate Judge also explicitly warned Petitioner that failure to comply with the order could result in the dismissal of this action. (*Id.*). The order was mailed to the address provided when this case was filed, and that mail has not been returned undelivered. Petitioner has taken no further action.

As the Magistrate Judge warned in her order, Petitioner’s lack of response to the order can be found to indicate an intent to cease prosecuting this case, subjecting the case to dismissal. *See Fed. R. Civ. P. 41(b)*(stating that district courts may dismiss an action if a petitioner fails to comply with “any order of the court”); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(affirming the district court’s dismissal of an action stating that dismissal is appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 921 (4th Cir. 1982)(remanding a case so that the district court may impose a sanction “such as . . . dismissal without prejudice”). Because the order has not been returned undelivered, and Petitioner has not taken any further action since the Magistrate Judge issued her instructions, this Court presumes that Petitioner received the order and

has nevertheless neglected to comply with it, abandoning the action. Accordingly, the Court DISMISSES this case without prejudice.¹ The Clerk of Court shall close the file.

IT IS SO ORDERED.



Richard M. Gergel
United States District Judge

December 4, 2012
Charleston, South Carolina

¹ Under General Order, Misc. No. 3:07-5014-JFA, this dismissal without prejudice does not count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms from the Office of the Clerk of Court, located at 901 Richland Street, Columbia, South Carolina 29201.